REMARKS

Applicant respectfully requests reconsideration and allowance of the subject application in view of the foregoing amendments and the following remarks.

Claims 1-10, 13-19, and 21 are pending in the application, with claims 1, 13, and 15 being independent. Claims 11, 12, and 20 have been canceled herein without prejudice to or disclaimer of the subject matter recited therein. Claims 1-4, 6-10, 13-15, and 17 have been amended, and claim 21 has been added. Support for the claim amendments and additions can be found in the original disclosure as filed. No new matter has been added.

Drawings

In the Office Action, the drawings were objected to for failing to show features recited in claims 11, 12, and 20. Claims 11, 12, and 20 have been canceled herein, thereby obviating the drawing objection.

Specification

The specification has been amended to attend to several minor informalities. No new matter has been added.

§ 112 Rejection

Claims 1-20 were rejected under 35 U.S.C. § 112, second paragraph, as being indefinite. In particular, the Office Action states that "[i]f the powder tool is the claimed invention, then the structure of the other such as the fastener is not germane to the scope

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of the invention, unless the guide member and the fastener are being claimed in combination with the powder tool." This rejection is respectfully traversed. The fact that some of the dependent claims encompass a powder tool in combination with a support device and/or a guide member, while other dependent claims encompass a powder tool, a support device, or a guide member alone does not render the claims indefinite. Nevertheless, without conceding the propriety of the rejection, claims 3 and 6-9 have been amended to even more clearly recite features of Applicant's invention.

§ 102 Rejection

Claims 1, 2, 5, 10, 11, and 13-16 were rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 4,068,790 (Osterle et al.). This rejection is respectfully traversed. Nevertheless, without conceding the propriety of the rejection, claim 11 has been canceled, thereby rendering moot the rejection of that claim. Also, independent claims 1, 13, and 15 have been amended to even more clearly recite features of Applicant's invention. Support for the amendments to claims 1, 13, and 15 can be found in the original disclosure at least in FIGS. 3A and 3B and paragraphs [0026]-[0028].

Independent claim 1, as presently presented, is directed to a powder driven tool comprising, among other things, a guide member including a wall portion defining a cavity having an oblong perimeter to accommodate a support device.

Osterle et al. fails to disclose or suggest such features. Osterle et al. is directed to a power control arrangement for an explosive, powder-driven setting gun. The setting gun of Osterle et al. includes a casing 1 having a front or muzzle end and forming an axially extending bore, a piston guide 3 constructed in two parts including a rear cylinder

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4 and a muzzle part 6 connected together over a threaded section 5 on each, an axially displaceable driving piston 7 arranged within the piston guide 3, and a cartridge 8 mounted in a chamber in the rear end of cylinder 4 which provides explosive gases for propelling the driving piston against a nail 9 inserted into the muzzle part 6.

However, Osterle et al. fails to disclose or suggest a "guide member including a wall portion ... defining a cavity having an oblong perimeter to accommodate the support device," as presently recited in independent claim 1. Rather, as shown in FIGS. 1 and 2 of Osterle et al., the bore in the muzzle 6 is round so as to accommodate the nail 9.

Independent claims 13 and 15 are directed to a guide member and a support assembly, respectively, and each recites features similar to those of claim 1 discussed above. Accordingly, claims 13 and 15 are allowable for substantially the same reasons discussed above with respect to independent claim 1.

In addition, **independent claim 15** recites that the guide member "includes a slot formed in a side of the cavity and extending in the axial direction for engaging the support device so that the support device is driven in a straight direction." Osterle et al. also fails to disclose or suggest this feature of independent claim 15. The Office Action asserts in the last paragraph on page 4 that the claimed slot reads on the bore in the muzzle 6 of Osterle et al. However, the bore of Osterle et al. cannot be said to be "formed in a side of the cavity and extending in the axial direction for engaging the support device," as presently recited in independent claim 15.

For at least the foregoing reasons, Applicant submits that independent claims 1, 13, and 15 are allowable over Osterle et al.

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Dependent claims 2, 5, 10, 14, and 16 depend from one of claims 1, 13, and 15 and are allowable by virtue of this dependency, as well as for the additional features that they recite.

In particular, **dependent claim 2** recites that "the guide member includes a slot formed in a side of the cavity and extending in the axial direction for engaging the support device so that the support device is driven in a straight direction." As noted above, the Office Action asserts that this feature is met by the bore in the muzzle 6 of Osterle et al. However, the bore of Osterle et al. cannot be said to be "formed in a side of the cavity and extending in the axial direction for engaging the support device," as presently recited in dependent claim 2.

Dependent claim 10 recites that "the piston is molded to conform to a shape of the support device." There is no disclosure or suggestion anywhere in Osterle et al. that the piston 7 is molded to conform to the shape of the head of nail 9.

Accordingly, dependent claims 2 and 10 are allowable for at least these additional reasons.

§ 103 Rejections

Claims 3 and 19 were rejected under 35 U.S.C. § 103(a) as being obvious over Osterle et al. in view of U.S. Patent No. 5,417,534 (Losada). This rejection is respectfully traversed. Nevertheless, without conceding the propriety of the rejection, claim 3 has been amended to more clearly recite features of Applicant's invention. Support for the amendment to claim 3 can be found in the original disclosure at least in FIGS. 3A and 3B and paragraph [0028].

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Dependent claims 3 and 19 depend from one of independent claims 1 and 15 and, therefore, include all of the features of their respective base claim. Losada discloses a fastener assembly, but fails to remedy the deficiencies in Osterle et al. noted above with respect to independent claims 1 and 15 (assuming, for the sake of argument, that the teachings of the cited documents can even by combined). Specifically, Losada fails to disclose or suggest a guide member or wall defining "a cavity having an oblong perimeter to accommodate the support device," as presently recited in independent claims 1 and 15. Accordingly, claims 3 and 19 are allowable by virtue of their dependency from claims 1 and 15, respectively, as well as for the additional features that they recite.

In particular, dependent claims 3 and 19 both recite that "the support device comprises a removable guide clip." Neither Osterle et al. nor Losada discloses a support device having a removable guide clip. FIG. 1 of Osterle et al. depicts some sort of circular washer or spacer positioned on the end of the nail 9. Losada discloses a fastener assembly having a round washer 10 and a ribbed plastic flute 74 circumscribing a shank 16 of the fastener assembly to guide the fastener assembly within the barrel of a power actuated gun (FIG. 1, col. 3, lines 12-18). However, neither the washers nor the ribbed plastic flute of Osterle et al. and Losada can be said to constitute a "removable guide clip," as presently recited in both dependent claims 3 and 19. Nor can those elements of Osterle et al. and Losada be said to "engag[e] the slot formed in the side of the cavity," as also presently recited in dependent claim 3. Thus, even if, for the sake of argument, the documents could be combined as proposed in the Office Action, the resulting combination still would lack at least the foregoing features of claims 3 and 19.

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Accordingly, dependent claims 3 and 19 are allowable for at least these additional reasons.

Claims 4 and 17 were rejected under 35 U.S.C. § 103(a) as being obvious over Osterle et al. in view of U.S. Patent No. 2,307,348 (Anderson). This rejection is respectfully traversed. Nevertheless, without conceding the propriety of the rejection, claims 4 and 17 have been amended to more clearly recite features of Applicant's invention. Support for the amendments to claims 4 and 17 can be found in the original disclosure at least in FIG. 3A and paragraph [0028].

Dependent claims 4 and 17 depend from one of independent claims 1 and 15 and, therefore, include all of the features of their respective base claim. Anderson discloses a fastening device, but fails to remedy the deficiencies in Osterle et al. noted above with respect to independent claims 1 and 15 (assuming, for the sake of argument, that the teachings of the cited documents can even by combined). Specifically, Anderson fails to disclose or suggest a guide member or wall defining "a cavity having an oblong perimeter to accommodate the support device," as presently recited in independent claims 1 and 15. Accordingly, claims 4 and 17 are allowable by virtue of their dependency from claims 1 and 15, respectively, as well as for the additional features that they recite.

In particular, dependent claims 4 and 17 both recite that "the guide member includes a gaff protruding from a distal end of the guide member." The Office Action acknowledges on page 6 that Osterle et al. fails to disclose or suggest that the guide member includes a gaff, but asserts that this feature is taught by Anderson. Applicant respectfully disagrees.

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Anderson discloses a cap having "a plurality of wedge-shaped protrusions 8, each of which are driven into the plasterboard to hold the cap in place" (col. 2, lines 37-39). However, there is no disclosure or suggestion in Anderson of including "a gaff protruding from a distal end of the guide member," as presently recited in dependent claims 4 and 17. Thus, even if, for the sake of argument, the documents could be combined as proposed in the Office Action, the resulting combination still would lack at least the foregoing features of claims 4 and 17.

Accordingly, dependent claims 4 and 17 are allowable for at least these additional reasons.

Claims 6-9 and 18 were rejected under 35 U.S.C. § 103(a) as being obvious over Osterle et al. in view of U.S. Patent No. 4,979,858 (Van Allman et al.). This rejection is respectfully traversed.

Dependent claims 6-9 and 18 depend from one of independent claims 1 and 15 and, therefore, include all of the features of their respective base claim. Van Allman et al. discloses a guidance device, but fails to remedy the deficiencies in Osterle et al. noted above with respect to independent claims 1 and 15 (assuming, for the sake of argument, that the teachings of the cited documents can even by combined). Specifically, Van Allman et al. fails to disclose or suggest a guide member or wall defining "a cavity having an oblong perimeter to accommodate the support device," as presently recited in independent claims 1 and 15. Accordingly, claims 6-9 and 18 are allowable by virtue of their dependency from claims 1 and 15, respectively, as well as for the additional features that they recite.

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In particular, dependent claim 8 recites "a removable guide clip positioned distally of the threads on the shaft." The Office Action acknowledges on page 7 that Osterle et al. lacks this feature, but asserts that it is taught by Van Allman et al. Applicant respectfully disagrees.

Van Allman et al. discloses a threaded stud 30, on one end of which is positioned a guidance flute 10 (FIG. 15; col. 6, lines 16-48). However, the guidance flute 10 of Van Allman et al. cannot be said to constitute a "removable guide clip," recited in dependent claim 8. Thus, even if, for the sake of argument, the documents could be combined as proposed in the Office Action, the resulting combination still would lack at least the foregoing feature of claim 8.

Accordingly, dependent claim 8 is allowable for at least this additional reason.

Claims 12 and 20 were rejected under 35 U.S.C. § 103(a) as being obvious over Osterle et al. in view of U.S. Patent No. 4,479,599 (Conrad). This rejection is respectfully traversed. Nevertheless, without conceding the propriety of the rejection, claims 12 and 20 have been canceled, thereby rendering the rejection of those claims moot.

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New Claim

New claim 21 depends from independent claim 1 and recites features along the lines of dependent claims 2-10, as well as additional features. Accordingly, new claim 21 is allowable for at least the same reasons noted above with respect to claims 2-10.

Support for new claim 21 can be found in the original disclosure at least in FIGS. 3A and 3B and at paragraphs [0026]-[0028].

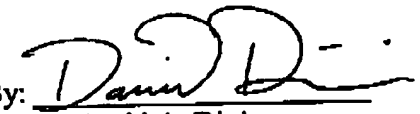
CONCLUSION

For at least the foregoing reasons, claims 1-10, 13-19, and 21 are in condition for allowance. Applicant respectfully requests reconsideration and withdrawal of the objection and rejections and an early notice of allowance.

If any issue remains unresolved that would prevent allowance of this case, **the Examiner is requested to contact the undersigned attorney to resolve the issue**.

Respectfully submitted,

Date: 9/16/05

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